

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION

FABIAN GONZALEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
MONTEREY MUSHROOMS, INC.	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

MONTEREY MUSHROOMS, INC. ("Defendant"), pursuant to 28 U.S.C. § 1441, respectfully removes this case to the United States District Court for the Eastern District of Tennessee. The grounds for removal are:

1. On March 27, 2015, a civil action was filed against Defendant, the only Defendant named and served in this matter, in the Circuit Court of Loudon County, Tennessee, entitled Fabian Gonzalez v. Monterey Mushroom, Inc, Civil Case No. 2015-cv-34.

2. True and correct copies of all process, pleadings and orders served upon Defendant are attached hereto as the following exhibits:

Exhibit A - Summons  
Exhibit B - Complaint  
Exhibit C - First Amended Complaint

3. Plaintiff's Complaint and Summons were served on Defendant on April 2, 2015. Other than the April 2, 2015 service, and the filing of the First Amended Complaint, no

proceedings have been had in this matter. This Notice of Removal is filed within 30 days of the first day of service pursuant to 28 U.S.C. § 1446(b).

4. This Notice of Removal is timely under the provisions of 28 U.S.C. § 1446(b).

5. This is a case over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441, in that it is a civil action in which the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

(a) Upon information and belief, Plaintiff was at the time he commenced this case, and still is, a citizen of the State of Tennessee.

(b) Defendant was at the time Plaintiff commenced this case, and still is, a corporation incorporated only under the laws of the State of California, with its principal place of business in the State of California (Exhibit D - Affidavit of Mark Lustig).

(c) Defendant was not at the time Plaintiff commenced this case, has not been, and is not now, a citizen of the State of Tennessee, the state in which Plaintiff commenced this case.

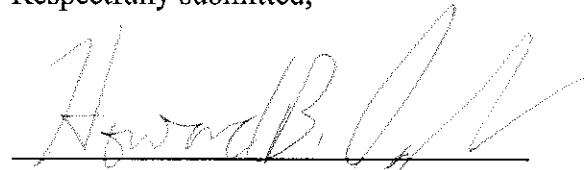
(d) Plaintiff seeks an award of compensatory damages, and punitive damages. The prayer for relief in the Complaint seeks such damages in unlimited amounts, "to be determined by a Jury." Accordingly, there is no question that Plaintiff seeks an award of damages exceeding \$75,000, exclusive of interest and costs.

7. Based upon the preceding facts, this Court has original jurisdiction over this case pursuant to 28 U.S.C. §§ 1332, and this case is therefore properly removable to this Court pursuant to 28 U.S.C. § 1441(b).

8. Defendant states that true and correct copies of this Notice of Removal will be filed with the Clerk in the Circuit Court of Loudon County, State of Tennessee, promptly after the filing of this Notice of Removal.

**WHEREFORE**, Defendant prays that the above described action pending in the Circuit Court of Loudon County, State of Tennessee, be removed therefrom to this Court.

Respectfully submitted,



Howard B. Jackson, BPR # 021316

Ashley R. Griffith, BPR #031441

WIMBERLY LAWSON WRIGHT DAVES & JONES, PLLC

550 Main Avenue, Suite 900

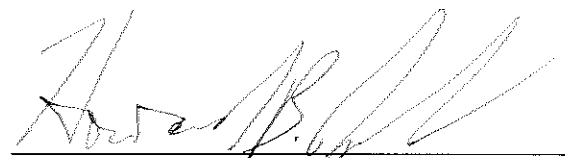
Knoxville, Tennessee 37902

Attorneys for Monterey Mushrooms, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been served upon Joseph R. Ford, Attorney for Plaintiff, at his address of P.O. Box 905, Loudon, Tennessee 37774, by placing same in the United States mail, postage prepaid.

This 30<sup>th</sup> day of April, 2015.



Howard B. Jackson

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

FABIAN GONZALEZ,

Plaintiff,

v.

MONTEREY MUSHROOMS, INC.

Defendant.

No. 2015-CV-34

FILED  
TIME 10:33 AM/PM

MAR 27 2015

LISA NILES  
CIRCUIT COURT CLERK  
J. P. McLaughlin D.C.

COPY

SUMMONS

You are hereby summoned and required to serve upon Joseph R. Ford, Plaintiff's attorney, whose address is P. O. Box 905, Loudon, Tennessee 37774, an Answer to the Complaint herewith served upon you within 30 days after service of this Summons and Complaint upon you, exclusive of the day of service. A copy of the Answer must be filed with the Court either before or within a reasonable time after service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the Complaint.

Issued and tested this 27<sup>th</sup> day of March, 2015.

CLERK

DEPUTY CLERK

NOTICE

To the Defendant(s):

Tennessee law provides a Ten Thousand Dollar (\$10,000.00) personal property exemption from execution or seizure to satisfy a Judgment. If a Judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the Clerk of the Court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and so not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

To the process server: Defendant: Monterey Mushrooms, Inc.  
Can be served at: Corporation Service Company  
2908 Poston Avenue  
Nashville, Tennessee 37203

RETURN

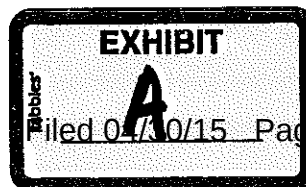
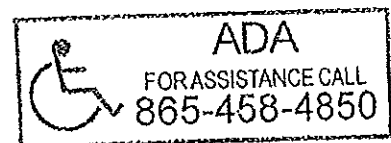
I received this summons on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

I hereby certify and return that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

I: ( ) served this Summons and a Complaint on the Defendant \_\_\_\_\_  
in the following manner: \_\_\_\_\_

I: ( ) failed to serve this summons within 30 days after its issuance because: \_\_\_\_\_

Process Server



IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

FABIAN GONZALEZ,  
178 Caramel Lane,  
London, Tennessee 37774

Plaintiff,

v.

MONTEREY MUSHROOMS, INC.,  
*Registered Agent:*  
*Corporation Service Company*  
2908 Poston Avenue,  
Nashville, Tennessee 37203

Defendant.

COPY

No. 2015-CV-24

FILED  
TIME 12:33 PM

MAR 27 2015

LISA NILES  
CIRCUIT COURT CLERK  
Nashville, TN

COMPLAINT

Comes the Plaintiff, Fabian Gonzalez, and would respectfully show unto this Honorable Court as follows:

1. Plaintiff, Fabian Gonzalez, is a citizen and resident of Loudon County, Tennessee.
2. Defendant, Monterey Mushrooms, Inc., is a California corporation authorized to do business in the State of Tennessee with its principal address at 260 Westgate Drive, Watsonville, California 95076.
3. At all times relevant herein, Defendant was conducting business at 19748 Hwy 72 N., Loudon, Loudon County, Tennessee 37774.
4. At all times relevant herein, the Defendant was an employer subject to the provisions of the Tennessee Public Protection Act, Tenn. Code Ann. §50-1-304.
5. On or about September 1999, Plaintiff, Fabian Gonzalez, began working for the Defendant and was continuously employed until his termination.

EXHIBIT

B

6. From on or about, February 2013 until he was terminated, Plaintiff was employed as the Safety Coordinator for Defendant.

7. At all times during his employment with Defendant, Plaintiff performed his job duties in a competent and satisfactory manner receiving high grades on evaluations.

8. During his employment with Defendant, Plaintiff did not have a contract of employment and was considered an employee at will.

9. During his employment with Defendant, Plaintiff received multiple merit based raises and promotions.

10. Plaintiff was informed by the Human Resources Manager, Joanna Richardson, on July 31, 2014 that his deposition may be taken in connection with a claim for workers' compensation benefits filed by Bryant West against Monterey Mushrooms, Inc.

11. Plaintiff informed Mrs. Richardson what he knew about the case and his factual knowledge was not favorable to Monterey Mushrooms, Inc.

12. Approximately one hour after his conversation with Mrs. Richardson, Plaintiff was called into the office of General Manager Dirk Cox.

13. General Manager Dirk Cox used an intimidating tone and demeanor and again asked Plaintiff about his knowledge of Bryant West's claim.

14. Plaintiff told General Manager Dirk Cox his factual knowledge was not favorable to Defendant, Monterey Mushrooms, Inc.

15. General Manager Dirk Cox got angry and told Plaintiff he had to go to bat for the company like "Humberto" had done for his plant in Princeton, Illinois.

16. Plaintiff told General Manager Dirk Cox he would not lie.
17. General Manager Dirk Cox then told Plaintiff to look for another job.
18. Approximately two weeks later, on August 13, 2014, Plaintiff was terminated.
19. The Plaintiff alleges he was terminated for refusing to commit perjury or aggravated perjury in violation of Tenn. Code Ann. §§39-16-702, -703 or otherwise engage in illegal activities.
20. The Defendant knew that subornation of perjury is a criminal offense defined at Tenn. Code Ann. §39-16-705.
21. Plaintiff had a good-faith belief that the Defendant was attempting to induce him to commit perjury with his testimony as it related to Bryant West's claim for workers' compensation benefits.
22. Plaintiff alleges that the Defendant violated T.C.A. §50-1-304 by entering into a retaliatory discharge of the Plaintiff and that the Plaintiff's refusal to participate in the Defendant's illegal activity was exclusively the factor in the Defendant's termination of the Plaintiff.
23. Defendant is responsible and liable for the retaliatory actions of its agents and employees.
24. Plaintiff alleges he is entitled to recover back pay, front pay, and other economic damages caused by the unlawful discharge by Defendant.
25. Plaintiff alleges that as a result of the retaliatory discharge enacted by the Defendant, Monterey Mushrooms, Inc., the Plaintiff is entitled to compensatory damages

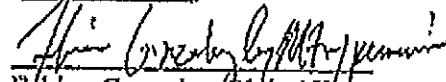
due to his extreme humiliation and embarrassment that he has sustained as a result of his unlawful termination by the Defendant.

26. Plaintiff alleges that the Defendant, Monterey Mushrooms, Inc., acted intentionally, maliciously, and recklessly in terminating the Plaintiff's employment and that as a result of the unlawful actions of the Defendant, the Plaintiff, Fabian Gonzalez, further alleges that he is entitled to recover punitive damages.

**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:**

1. That process issue and be served upon the Defendant, Monterey Mushrooms, Inc., through the registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203;
2. That Plaintiff, Fabian Gonzalez, have judgment against the Defendant, Monterey Mushrooms, Inc., in a sum to be determined by a Jury as his compensatory damages and that the Plaintiff, Fabian Gonzalez, have judgment against the Defendant, Monterey Mushrooms, Inc., in a sum to be determined by a Jury as his punitive damages, together with the costs and expenses of prosecuting this matter;
3. Reasonable attorney's fees;
4. The costs of this action;
5. That a six-member Jury be empanelled to try this matter; and
6. That the Plaintiff have such other, further and general relief to which he may be entitled.

On this the 21<sup>st</sup> day of March, 2015.

  
Fabian Gonzalez, Plaintiff



RESPECTFULLY SUBMITTED:

By: 

Joseph R. Ford, BPR No. 014313  
Attorney for Plaintiff  
FORD & NICHOLS  
P.O. Box 905  
Loudon, Tennessee 37774  
(865) 458-4301

COST BOND

We hereby acknowledge ourselves as sureties for the costs of this cause for all costs, taxes and damages, in accordance with T. C. A. §20-12-120.

  
Fabian Gonzalez, Plaintiff

By: 

Joseph R. Ford, Esq.

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

FABIAN GONZALEZ,  
178 Caramel Lane,  
Loudon, Tennessee 37774

Plaintiff,

v.

No. 2015-CV-34

MONTEREY MUSHROOMS, INC.,  
*Registered Agent:*  
*Corporation Service Company*  
2908 Poston Avenue,  
Nashville, Tennessee 37203

Defendant.

FILED  
TIME 1:30 PM  
APR 02 2015  
LISA NILES  
CIRCUIT COURT CLERK  
*Lisa Niles*

FIRST AMENDED COMPLAINT

Comes the Plaintiff, Fabian Gonzalez, and would respectfully show unto this Honorable Court as follows:

1. Plaintiff, Fabian Gonzalez, is a citizen and resident of Loudon County, Tennessee.
2. Defendant, Monterey Mushrooms, Inc., is a California corporation authorized to do business in the State of Tennessee with its principal address at 260 Westgate Drive, Watsonville, California 95076.
3. At all times relevant herein, Defendant was conducting business at 19748 Hwy 72 N., Loudon, Loudon County, Tennessee 37774.
4. At all times relevant herein, the Defendant was an employer subject to the provisions of the Tennessee Public Protection Act, Tenn. Code Ann. §50-1-304.
5. On or about September 1999, Plaintiff, Fabian Gonzalez, began working for the Defendant and was continuously employed until his termination,

EXHIBIT

C

6. From on or about, February 2013 until he was terminated, Plaintiff was employed as the Safety Coordinator for Defendant.

7. At all times during his employment with Defendant, Plaintiff performed his job duties in a competent and satisfactory manner receiving high grades on evaluations.

8. During his employment with Defendant, Plaintiff did not have a contract of employment and was considered an employee at will.

9. During his employment with Defendant, Plaintiff received multiple merit based raises and promotions.

10. Plaintiff was informed by the Human Resources Manager, Joanna Richardson, on July 31, 2014 that his deposition may be taken in connection with a claim for workers' compensation benefits filed by Bryant West against Monterey Mushrooms, Inc.

11. Plaintiff informed Mrs. Richardson what he knew about the case and his factual knowledge was not favorable to Monterey Mushrooms, Inc.

12. Approximately one hour after his conversation with Mrs. Richardson, Plaintiff was called into the office of General Manager Dirk Cox.

13. General Manager Dirk Cox used an intimidating tone and demeanor and again asked Plaintiff about his knowledge of Bryant West's claim.

14. Plaintiff told General Manager Dirk Cox his factual knowledge was not favorable to Defendant, Monterey Mushrooms, Inc.

15. General Manager Dirk Cox got angry and told Plaintiff he had to go to bat for the company like "Humberto" had done for his plant in Princeton, Illinois.

16. Plaintiff told General Manager Dirk Cox he would not lie.
17. General Manager Dirk Cox then told Plaintiff to look for another job.
18. Plaintiff reported the illegal conduct by Defendant's agents to an outside third party attorney, Joseph R. Ford, by phone call on August 13, 2014.
19. Plaintiff met with attorney Joseph R. Ford on August 14, 2014 and reported the illegal conduct again.
20. On August 15, 2014 Plaintiff was terminated.
21. The Plaintiff alleges he was terminated for refusing to commit perjury or aggravated perjury in violation of Tenn. Code Ann. §§39-16-702, -703 or otherwise engage in illegal activities.
22. The Defendant knew that subornation of perjury is a criminal offense defined at Tenn. Code Ann. §39-16-705.
23. Plaintiff had a good-faith belief that the Defendant was attempting to induce him to commit perjury with his testimony as it related to Bryant West's claim for workers' compensation benefits.
24. Plaintiff alleges that the Defendant violated T.C.A. §50-1-304 by entering into a retaliatory discharge of the Plaintiff and that the Plaintiff's refusal to participate in the Defendant's illegal activity was exclusively the factor in the Defendant's termination of the Plaintiff.
25. Defendant is responsible and liable for the retaliatory actions of its agents and employees.
26. Plaintiff alleges he is entitled to recover back pay, front pay, and other economic damages caused by the unlawful discharge by Defendant.

27. Plaintiff alleges that as a result of the retaliatory discharge enacted by the Defendant, Monterey Mushrooms, Inc., the Plaintiff is entitled to compensatory damages due to his extreme humiliation and embarrassment that he has sustained as a result of his unlawful termination by the Defendant.

28. Plaintiff alleges that the Defendant, Monterey Mushrooms, Inc., acted intentionally, maliciously, and recklessly in terminating the Plaintiff's employment and that as a result of the unlawful actions of the Defendant, the Plaintiff, Fabian Gonzalez, further alleges that he is entitled to recover punitive damages.

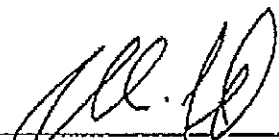
**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:**

1. That process issue and be served upon the Defendant, Monterey Mushrooms, Inc., through the registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203;
2. That Plaintiff, Fabian Gonzalez, have judgment against the Defendant, Monterey Mushrooms, Inc., in a sum to be determined by a Jury as his compensatory damages and that the Plaintiff, Fabian Gonzalez, have judgment against the Defendant, Monterey Mushrooms, Inc., in a sum to be determined by a Jury as his punitive damages, together with the costs and expenses of prosecuting this matter;
3. Reasonable attorney's fees;
4. The costs of this action;
5. That a six-member Jury be empanelled to try this matter; and
6. That the Plaintiff have such other, further and general relief to which he may be entitled.

On this the 2 day of April, 2015.

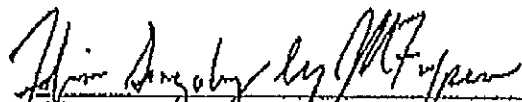
  
Fabian Gonzalez, Plaintiff


RESPECTFULLY SUBMITTED:

By:   
Joseph R. Ford, BPR No. 014313  
Attorney for Plaintiff  
FORD & NICHOLS  
P.O. Box 905  
Loudon, Tennessee 37774  
(865) 458-4301

COST BOND

We hereby acknowledge ourselves as sureties for the costs of this cause for all costs, taxes and damages, in accordance with T. C. A. §20-12-120,

  
Fabian Gonzalez, Plaintiff

By:   
Joseph R. Ford, Esq.

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

AFFIDAVIT OF MONTEREY MUSHROOMS, INC.

My name is Mark Lustig. I am over the age of twenty-one, and am giving this statement based upon my personal knowledge.

1.

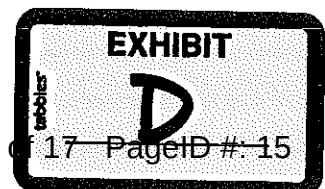
I am the CFO for Monterey Mushroom, Inc. I have been employed by Monterey Mushrooms for 2 years, and have been in my current position for approximately 2 years.

2.

Monterey Mushrooms is incorporated in the State of California. It is not incorporated in any other state.

3.

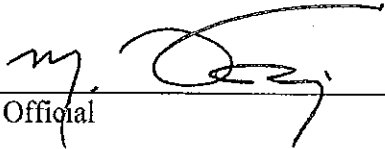
Watsonville, California is the Company's principal place of business. Most corporate meetings are held in Watsonville, and all annual meetings are held in Watsonville. Business functions such as marketing, accounting, finance, legal, and training and development are managed and directed for the entire company from Watsonville, including the operations located in Tennessee. The corporate Human Resources Department is located in Watsonville. The issuance of salaried payroll checks and the transfer of payroll withholdings to state and federal agencies for all employees of the Company are managed through the corporate offices in Watsonville. All computer activities to include payroll, accounts payable, inventory, sales, repairs and maintenance, and distribution for all Monterey Mushrooms facilities are maintained and controlled by the corporate Watsonville office. Payments for all workers' compensation, excluding the Texas facilities, as well as unemployment compensation insurance, income and franchise taxes, business insurance are paid by the corporate office in Watsonville. Monterey



Mushrooms' largest facility in terms of square footage and employees is the Royal Oaks facility located near Watsonville. Monterey Mushrooms' principal office address as stated on the corporate tax returns is in Watsonville.

I have read the foregoing Affidavit consisting of three paragraphs and declare under penalty of perjury that it is true and correct to the best of my knowledge.

FURTHER AFFIANT SAITH NOT.

  
\_\_\_\_\_  
Company Official

Sworn to and subscribed before  
me this 28<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

*See attached.*



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

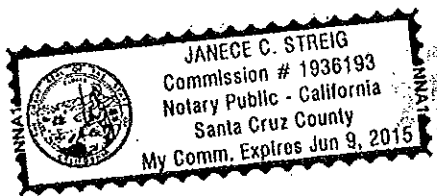
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Santa Cruz  
 On 4/28/2015 before me, Janece C. Streig, Notary Public  
 Date Here Insert Name and Title of the Officer  
 personally appeared Mark Lustig  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Affidavit of Marriage Document Date: 4/28/2015  
 Number of Pages: 2 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Mark Lustig  
☒ Corporate Officer — Title(s): CEO  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_